

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-513-T - ORDER NO. 93-637

IN RE: Application of Glasscock Company, Inc.,) ORDER
4650 Broad Street Ext., P. O. Box 1384,) GRANTING
Sumter, SC 29151, for a Class E Certi-) APPLICATION
ficate of Public Convenience and)
Necessity.)

This matter is before the Public Service Commission of South Carolina (the Commission) on the September 15, 1992 Application of Glasscock Company, Inc. (Glasscock or the Applicant) for a Class E Certificate of Public Convenience and Necessity¹ authorizing it to transport property as follows:

COMMODITIES IN GENERAL, AS DEFINED IN R.103-211(1), ALSO EXCLUDING BANK COURIER COMMODITIES AND COMMODITIES COMMONLY TRANSPORTED IN ARMORED VEHICLES; AND DRY COMMODITIES IN BULK: Between points and places in South Carolina.

RESTRICTED: TO TRUCKLOAD LOTS.

This Application was filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of

1. "A class E motor carrier is a common carrier of property by motor vehicle which does not operate upon any particular route or particular schedule and which is commonly known as an irregular route common carrier." 26 S.C. Regs. 103-114(1976).

general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene were filed by Santee Carriers, Inc. (Santee) and Southern Bulk Haulers, Inc. (Southern).²

A hearing was held at the Offices of the Commission on June 24, 1993. The Honorable Henry G. Yonce presided. The Applicant was represented by John E. Schmidt, Esquire, and William H. Latham, Esquire; Santee was represented by Robert T. Bockman, Esquire; Southern was represented by Thomas M. Boulware, Esquire; and the Commission Staff was represented by Gayle B. Nichols, Staff Counsel.

After a full consideration of the testimony presented and the applicable law, the Commission makes the following findings of fact and conclusions of law.

2. Santee and Southern may be referred to collectively as the Intervenors.

FINDINGS OF FACT

1. South Carolina Code Ann. §58-23-330 (Supp. 1992) provides as follows:

[a]n applicant applying for a certificate ... to operate as a motor vehicle common carrier may be approved upon showing ... that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the [C]ommission determines that the public convenience and necessity is being served already, the [C]ommission may deny the application.

2. 26 S.C. Regs. 103-134(1)(A)(1)(Supp. 1992) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

- (a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT, and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.
- (b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The Applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the cost associated therewith.
- (c) WILLING Having met the requirements as to 'fit and able,' the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

3. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 N.C. 43, 52, 132 S.E.2d 249, 255 (1963).

4. "'Necessity' means reasonably necessary and not absolutely imperative." Id. citing State v. Southern Railway Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). "... It is necessary if it appears reasonably requisite, is suited to and tends to promote the accommodation of the public." Id.

5. "In the phrase 'public convenience and necessity' the word 'necessity' means that which is needful, essential, requisite or conducive to 'public convenience'. When more convenient and adequate service is offered to the public, it would seem that necessity requires such public convenience should be served." Atlantic Greyhound Corporation v. Commonwealth of Virginia, 196 Va. 183, 193, 83 S.E.2d 379, 384 (1954).

6. The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional services'." Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 259, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission,

274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

7. Glasscock's September 15, 1992, Application indicates that the Applicant is a South Carolina corporation which has its principal place of business in Sumter. The testimony of the Applicant's President, James T. Glasscock, Jr., further indicates that Glasscock has received a "satisfactory" safety rating from this Commission, that there are no outstanding judgments against the Applicant, and that the Applicant is aware of and will meet this Commission's insurance requirements. According to the Application, Glasscock is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations. The financial exhibits attached to Glasscock's Application and the testimony from the proceeding indicate the Applicant is financially stable. Attachments to the Application reveal that Glasscock has the necessary equipment to provide the service for which it is applying. Mr. Glasscock testified that the Applicant is anxious to provide the for-hire motor carrier services for which it is applying.

8. Mr. Glasscock testified that Glasscock Company, Inc. was formed in 1963; he explained that Glasscock provides various services: sand mining and processing, concrete recycling, tank removal and remediation³, redi-mix concrete operations, and

3. Glasscock's tank removal and soil remediation services operate as a separate corporation.

trucking. Mr. Glasscock testified that since the early to mid-1980s, the Applicant has had Commission authority to haul waste products, hazardous wastes, building materials and dump truck commodities. Mr. Glasscock further testified that the Applicant has authority from the Interstate Commerce Commission (ICC). Mr. Glasscock testified that the Applicant's motor carrier business is the largest part of its operation and that it provides the majority of the transportation requirements of its other divisions.

9. Mr. Glasscock admitted that for the last eight to ten years the Applicant has been hauling bulk cement for-hire in tank vehicles under the mistaken impression that Glasscock's building materials certificate authorized bulk cement transportation. Mr. Glasscock explained that once Glasscock discovered that only bagged cement was authorized to be hauled under the building materials authority, it filed the current Application.

Mr. Glasscock further explained that Glasscock currently transports bulk cement under a lease agreement with J. Grady Randolph.⁴ Under the terms of the agreement, Glasscock is to provide the requisite insurance, drivers, dispatchers, and billing and lease four to five power units to J. Grady Randolph. Mr. Glasscock testified that the power equipment was identified with Glasscock's name. He testified that Glasscock controlled the hauling arrangement for shippers. Mr. Glasscock testified he was unaware that this lease arrangement was in violation of the

4. This lease agreement is dated December 10, 1992.

Commission's regulations⁵ and he admitted on cross-examination that he was incorrect about the lease requirements.

10. Mr. Glasscock testified that 10-15% of Glasscock's for-hire motor carrier operations involved the transportation of bulk cement. He stated that, due to weather and economic conditions, there are peaks and valleys in the demand for bulk cement transportation, but that there has been sufficient demand for this type of transportation. Mr. Glasscock testified that the bulk cement transportation business is profitable.

11. Glasscock presented the testimony of four "shipper witnesses." Robert J. Moeller, Vice-President of Marketing for National Cement, explained that his business has had difficulty in finding motor carriers which could make shipments in a timely manner. Mr. Moeller testified that he loses business when his shipment is not delivered at the time the customer requests. He testified that, at times, National Cement has had to employ out of state motor carriers to make intrastate hauls in South Carolina. Mr. Moeller testified that the cement hauling business needs more carriers, particularly during April to October when the demand for cement is at its peak.

K.S. Tupper, III, testified that Camden Concrete uses for-hire motor carriers to haul cement to its production facility during peak periods when it cannot supply its own trucks. Mr. Tupper testified that his business has used the services of Santee and

5. See, S. C. Regs. 103-220 to -226 (1976).

Southern and has had occasional problems. Mr. Tupper testified that Camden Concrete has previously used Glasscock's services and believed Glasscock would be able to deliver products in a timely manner using mechanically sound equipment. Finally, Mr. Tupper stated that Glasscock has a "top-notch" reputation.

Remer L. Evans, President and General Manager of Evans Redi-Mix, testified that his business uses bulk commodity hauling services to receive rock, sand, and cement to manufacture concrete. Mr. Evans explained that Evans Redi-Mix has used the services of Santee, Glasscock, and possibly Southern. Mr. Evans testified that carriers other than Glasscock have provided poor quality service. He stated that Glasscock, however, has a good reputation and understands his business' needs. Finally, Mr. Evans testified that his business market was growing by approximately 30% per year.

Thomas C. Hendrix, President and Treasurer of Southeastern Fly Ash, explained that his business brokers fly ash.⁶ He testified that his business ships fly ash on both an interstate and intrastate basis and that, on an intrastate basis, he has used Southern, Santee, J.D. Looper, Inc., and Low Country Trucking, Inc. Mr. Hendrix testified that bulk motor carriers give a preference to cement hauling, particularly during peak periods of construction. He stated that during those periods it is difficult to find transportation for fly ash and that if Glasscock's Application was approved, there would be an additional carrier for both cement and

6. Fly ash is used as an ingredient for concrete.

fly ash. Mr. Hendrix stated that when his business used Glasscock to haul fly ash on an interstate basis, Glasscock provided beautiful service.

12. Robert L. Williamson, President of Santee Carriers, Inc., testified on behalf of Intervenor Santee. Mr. Williamson explained that Santee is a major regional bulk cement motor carrier which has both ICC and South Carolina authority. Mr. Williamson testified that an additional carrier such as Glasscock would dilute Santee's business. Mr. Williamson explained that on most days, Santee has excess drivers and equipment. Mr. Williamson testified that the reasonable needs of shippers of bulk cement were being met by the current carriers.

On cross-examination, Mr. Williamson admitted that Santee had not conducted a traffic study or economic study of the bulk cement motor carrier industry. Mr. Williamson stated he had not talked to his shippers to determine if their needs were being met. Mr. Williamson further admitted that there could be numerous explanations, such as poor marketing and dissatisfaction by shippers, for Santee's idle drivers and equipment.

13. Michael D. Horton, President of Southern Bulk Haulers, testified on behalf of Intervenor Southern. He explained that Southern has ICC authority and a certificate from this Commission authorizing it to transport general commodities in bulk. Mr. Horton testified that there were presently a sufficient number of certificated carriers to meet the needs of the redi-mix concrete industry and that, given the demands of the redi-mix concrete and

cement industries, good service is being provided by the current motor carriers. Mr. Horton stated it is impractical to have drivers and equipment available solely for peak periods. Finally, Mr. Horton testified that an additional carrier would dilute Southern's market.

CONCLUSIONS OF LAW

1. Glasscock has demonstrated that it is fit, willing, and able to provide the Class E service for which it seeks authority. Specifically, Glasscock has established that it has no outstanding judgments, that it has the equipment necessary to provide the Class E authority it seeks, and has insurance which meets the Commission's requirements. Glasscock has demonstrated that its safety rating is satisfactory through the submission of a Commission safety rating. The Commission interprets the submission of the Application as Glasscock's demonstration of its willingness to provide Class E service. While the Commission admonishes Glasscock for use of a lease arrangement which violates its regulations, the Commission nonetheless concludes that Glasscock is familiar with the statutes and regulations governing for-hire motor carriers and recognizes that Glasscock agrees to operate in compliance with these statutes and regulations.

2. The Commission concludes that the intervenors have not established that the public convenience and necessity is already being served by the currently authorized carriers. Based on the evidence from this proceeding, it is clear that there is a demand

for additional carriers authorized to haul dry bulk commodities.⁷ It is clear that shippers recognize Glasscock as a carrier who provides reputable quality transportation and that they desire Glasscock's service.

3. Finally, although the Commission recognizes the Intervenor's concern that Glasscock's entrance into the market will harm their businesses, the Commission concludes that this fact in and of itself is insufficient to defeat Glasscock's Application in light of the abundant evidence that Glasscock will provide a needed service to the shippers of dry bulk commodities.

IT IS THEREFORE ORDERED:

1. Glasscock's Application for Class E authority to transport commodities in general, with the exceptions noted on page 1 of this Order, and dry commodities in bulk, between points and places in South Carolina in truckload lots is hereby approved.

2. Glasscock shall comply with all applicable statutes and regulations regarding for-hire transportation in South Carolina.

3. Glasscock shall file the proper license fees and other information required by S.C. Code Ann. §58-23-10 to -1830 (1976, as amended) and by 26 S.C. Regs. 103-100 to -272 (1976, as amended), within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

4. Upon compliance with S.C. Code Ann. §58-23-10 to -1830

7. The Commission notes that the Intervenor did not challenge Glasscock's Application for authority to haul commodities in general.

(1976, as amended), and the applicable provisions of 26 S.C. Regs. 103-100 to -272 (1976, as amended), a certificate shall be issued to Glasscock authorizing the motor carrier services granted herein.

5. Prior to compliance with the above-noted requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Deputy Executive Director

(SEAL)